An appeal was taken to the Supreme Court of Iowa and that court on August 11, 1942, affirmed the District Court, holding that the bridge was not immune from the tax under the Constitution of the United States or the statute creating the Commission and that the bridge is not "property of the Unied States" and that, therefore, the bridge is not exempt under the Iowa statute which exempts "property of the United States" (R. 88-107).

Jurisdictional Statement.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States to review by Writ of Certiorari the judgment of the Supreme Court of Iowa is Section 237 (b) of the Judicial Code, as amended, United States Code Annotated Title 28, Section 344 (b), which provides:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had * * * where any title, right, privilege, or immunity is specially set up or claimed by either party under the constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied."

The claim of immunity from the Iowa real estate tax as a Federal Instrumentality is a right, privilege or immunity claimed under the Constitution and a statute of the United States and under the authority exercised by petitioner by virtue of said statute. The immunity is implied under the Constitution of the United States, and the statute involved

is (Public No. 189—76th Congress, Chapter 318, 1st Session) (S 955) entitled "An Act Creating the City of Dubuque Bridge Commission, and authorizing said Commission and its successors to purchase and/or construct, maintain and operate a bridge or bridges across the Mississippi River at or near Dubuque, Iowa, and East Dubuque, Illinois", which was duly approved July 18, 1939 (R. 13) (Act of Congress July 18, 1939, Sections 1-15, 53 Statutes 1051-1057).

Cases which sustain the jurisdiction of the Supreme Court of the United States to review the judgment and decree of certiorari are *Graves, et al.*, v. *People of State of New York*, 306 U. S. 466, 59 S. Ct. 595, 83 L. Ed. 927 (1939), certiorari granted 305 U. S. 592, 59 S. Ct. 252, — L. Ed. — (1938); *State Tax Commission of Utah* v. *Van Cott*, 306 U. S. 511, 59 S. Ct. 605, 83 L. Ed. 950 (1939), certiorari granted 305 U. S. 592, 59 S. Ct. 358, 83 L. Ed. 375 (1939); *Alabama* v. *King & Boozer*, 314 U. S. 1, 62 S. Ct. 43, 86 L. Ed. —, certiorari granted 314 U. S. 118, 62 S. Ct. 116, 86 L. Ed. — (1941).

The District Court of Iowa, in and for Dubuque County, was the court of first instance in this proceeding. In that court the federal questions involved herein were raised in the first pleadings filed therein, to wit: Statement of Appellant's claim by reference to "Exhibit A" attached thereto (R. 2, 4), and in certified copy of proceedings of Board of Review also attached thereto (R. 7); they were also raised by the Notice of Appeal from Board of Review served upon the chairman of the Board of Review (R. 10-12). In each of said instances the federal questions were raised by the following language:

> "4. The City of Dubuque Bridge Commission is a Federal Instrumentality and its property is, therefore, not subject to State taxation."

> "1. Said property is exempt from taxation under Section 6944, Subparagraph 1, Code of Iowa, 1939, as said property is in essence Federal * * * property within the meaning of said section."

The foregoing were set out in the findings of said District Court in its judgment and decree (R. 81) as being claimed by the Commission and were denied in said judgment and decree in the following language:

> "It is, therefore, adjudged and decreed by the Court, that the said bridge, located on the above described real estate, and owned by City of Dubuque Bridge Commission, is not immune from State taxation, under the facts and law in this case, and that the assessment herein complained of was a lawful and valid assessment, and that the appeal of said City of Dubuque Bridge Commission is hereby dismissed."

These claims were also made in the Supreme Court of Iowa (R. 91, 92), this being an equitable proceeding (Section 7134, Code of Iowa, 1939) triable de novo on appeal to that Court (Section 11433, Code of Iowa, 1939). The claim of immunity from taxation as a Federal Instrumentality involves a consideration of immunity from state taxation under the Constitution of the United States, and the same was fully presented to and considered and determined by the Supreme Court of Iowa (R. 95-104). The following quotations from the opinion of the Iowa Supreme Court shows that the federal questions sought to be reviewed herein, were raised, considered, and passed upon by that court:

> "Appellant argues as to the constitutionality of the act creating the City of Dubuque Bridge Commission as a constitutional exercise of Congressional power. Appellee, Board of Review, does not dispute in argument that the act creating the Commission and prescribing its powers is constitutional. We have no

doubt that this was a constitutional exercise of a power of Congress, but the conclusion drawn by appellant that Congress, having constitutionally created the corporation such as the one in question, has created a Federal instrumentality not subject to state tax, does not necessarily follow (R. 93-94).

"The opinion reviews McCulloch *v.* Maryland, 4 Wheat. 316, 4 L. Ed. 579, and various other cases, and holds that when the national government lawfully acts through a corporation which it owns and controls, those activities are governmental functions entitled to whatever tax immunity attaches to those functions when carried on by the government itself through its departments.

"The trouble with the application of this case to the case at bar is that the Dubuque Bridge Commission is not a corporation which the United States owns and controls. The bridge is not a government-owned structure." (R. 95.)

"Under Division IV of appellant's argument it asserts generally that the bridge owned by the City of Dubuque Bridge Commission is immune from state taxation under the Constitution of the United States." (R. 95.)

"The states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress, to carry into effect the powers vested in the national government." (R. 96.)

"Appellant argues that this immunity arises out of necessity under the federal system." (R. 96.)

"In considering the foregoing case, assuming that the Bridge Commission acts as an agency of the government, it would further be necessary that through this agency, the United States exercises its governmental powers, a proposition which we do not think the facts in this case establish." (R. 96.)

"The second division of appellant's argument under this head is that property owned by a Federal instrumentality engaged exclusively in the exercise of gov-

ernment functions not for private profit, is not subject to state taxation. Cited under this head are United States *v.* Coghlan, D. C., 1919, 261 F. 425; United States Shipping Board Emergency Fleet Corporation, 9 Cir., 1922, 282 F. 950; United States Spruce Production Corporation *v.* Lincoln County, D. C., 1922, 285 F. 388; Clallam County *v.* United States, 1923, 263 U. S. 341, 44 S. Ct. 121, 68 L. Ed. 328; City of New Brunswick *v.* United States, 1928, 276 U. S. 547, 48 S. Ct. 371, 72 L. Ed. 693, and the Graves case, supra. None of these cases can apply to or support the position of the appellant in the case at bar since all the property concerned in the litigation in each case, except the Graves case, consisted of property of the United States or of a corporation authorized by the United States and in which all the property was government owned." (R. 99.)

"The holding of the cases generally indicates that the rule is that such immunity not expressly granted must be shown to be an interference with or burden upon the Federal government, and as stated, we do not think such burden or interference exists in the present case." (R. 99-100.)

"We refer to this because we think that in the present case an interference or burden upon the Federal government and its operation does not appear and this seems to be the uniform rule, that there must be some such interference or burden to warrant the immunity from local or state taxation." (R. 100-101.)

"Appellant urges that Section 6944, Code of 1939, exempts the bridge from taxation as property of the United States. Appellant's assertion that the fact that the legal title is not in the name of United States of America does not disqualify the bridge from exemption may be granted. The mere name of the Federal instrumentality or agency, if its property were such, would not matter if it is actually Federal property, but the facts herein are that it is not such government property. We have previously discussed government instrumentalities and need not concern ourselves further therewith." (R. 104.)

"The history of the congressional legislation shows that the act was passed under circumstances not only not showing any intention or implication of exemption, but really showing the intention not to authorize such exemption from taxation." (R. 107.)

"We must conclude and hold that the decree of the district court should be sustained and the ruling and decree of the district court is therefore affirmed."

The final judgment sought to be reviewed is the decision of the Supreme Court of Iowa, the highest court in that state in which a decision could be had, which was filed and entered in the office of the Clerk of the Supreme Court of Iowa, on August 11, 1942, affirming the action of the trial court which denied the Commission's claim for immunity and exemption upon the Iowa real estate tax. The date upon which the application for Writ of Certiorari is presented is the 29th day of October, 1942.

The questions involved in this case are substantial, both from (a) a legal standpoint and (b) from a consideration of consequences of the denial of immunity from the state tax.

(a)

The decision of the Supreme Court of Iowa holds that the Commission, although constitutionally created by Congress in the lawful exercise of its governmental powers to accomplish a governmental purpose and that purpose only, nevertheless is not a Federal Instrumentality, does not exercise government powers, and that the property it uses to accomplish the governmental purpose is not immune from state taxation and is not property of the United States. The denial of constitutional immunity from state taxation in this case would, if allowed to stand, be a judicial repeal of constitutional immunity of Federal Instrumentalities from state taxation, except where expressly granted by Congress. Inasmuch as the United States is continually and ever-increasingly creating instrumentali-

ties to accomplish its governmental purposes, this question is of great importance.

This case also raises the question as to whether the tax immunity of governmental instrumentalities under the Constitution of the United States is to be denied because Congress in creating them was silent as to said immunity where a prior Congress granted immunity in an Act which was vetoed by the President of the United States because of said grant of immunity. The effect of congressional silence and legislative history on a doctrine which is implied in the Constitution presents a serious constitutional issue. The questions raised are substantial in their very essence.

(b)

The amount of the tax and the consequence of the denial of immunity therefrom are also substantial. The Iowa tax involved here is for the year 1941 in the sum of $4,620.57, based on a valuation of the old bridge at $102,225.00. This is an annual tax, always recurrent. The new bridge being built by the Commission will cost approximately $3,000,000.00 (R. 31, 43, 57). If the bridge is taxable in Iowa, it will also be taxable in Illinois. The Illinois rate of tax is about the same as the Iowa rate (R. 29). If the new bridge is taxed in both states at only 60% of $3,000,000.00, the annual tax on the present rates would be $75,600.00. In twenty years these taxes would total $1,512,000.00, and in thirty years, $2,368,000.00. An annual tax of $75,600.00 on the new bridge, plus annual interest charges, $105,000.00 (R. 58), plus annual operation and maintenance expense of $36,000.00 (R. 48), makes a total annual charge of $217,500.00, before any bonds could be retired. The gross income of the Commission for the year ending December 1, 1941, was only $188,163.00 (R. 73), and this was before tire and gasoline rationing. Moreover, the payment of the taxes will decrease the amount available for interest on

the bond issue and will prolong, if not make impossible, the accomplishment of the Congressional purpose, towit: the payment of the bonds and the making of the interstate bridge a toll-free structure.

Questions Presented.

The questions presented in this case are as follows:

1. Is the City of Dubuque Bridge Commission a Federal instrumentality?

2. Does the City of Dubuque Bridge Commission exercise governmental functions?

3. Is the City of Dubuque Bridge Commission immune from the Iowa real estate tax by virtue of the implied immunity of Federal instrumentalities from state taxation under the Constitution of the United States?

4. Is immunity from the Iowa real estate tax on the bridge of the City of Dubuque Bridge Commission to be denied because the first Act, passed by a prior Congress, undertaking to create the Commission was vetoed on account of a tax exemption clause therein, and the subsequent Act creating the Commission is silent as to tax immunity?

5. Is the bridge of the City of Dubuque Bridge Commission property of the United States?

Reasons Relied On for Allowance of the Writ.

1. As already pointed out, the federal questions presented are substantial, both from a legal standpoint and from the amount of tax involved and the subsequences of the denial of immunity from the state tax.

2. Petitioner contends that in holding that City of Dubuque Bridge Commission is not a Federal instrumentality, the Supreme Court of Iowa has decided a federal question of substance in a way probably not in accord with the

applicable decisions of the Court which cases it cites in the subjoined brief.

3. Petitioner contends that in holding that the City of Dubuque Bridge Commission does not exercise any governmental functions, the Supreme Court of Iowa has decided a federal question of substance in a way probably not in accord with the applicable decisions of this Court which cases it cites in the subjoined brief.

4. Petitioner contends that in holding that the City of Dubuque Bridge Commission is not immune from the Iowa real estate tax by virtue of the implied immunity of Federal instrumentalities from state taxation under the Constitution of the United States, the Supreme Court of Iowa has decided a federal question of substance in a way probably not in accord with the applicable decisions of this Court which cases are cited in the subjoined brief.

5. Petitioner contends that in holding that the bridge of the City of Dubuque Bridge Commission, a non-stock, non-profit corporation constitutionally created by Congress for a governmental purpose and that purpose only, and used exclusively to accomplish said purpose, is not constitutionally immune from the Iowa real estate tax, the Supreme Court of Iowa has decided a federal question of substance not theretofore determined by this Court.

6. Petitioner contends that in holding that the bridge of the City of Dubuque Bridge Commission is not immune from the Iowa real estate tax because the first Act, passed by a prior Congress, undertaking to create the Commission was vetoed on account of a tax exemption clause therein and the subsequent Act which actually created the Commission is silent with reference to taxation, the Supreme Court of Iowa decided a federal question of substance not theretofore determined by this Court.

7. Petitioner contends that by holding that the bridge of the City of Dubuque Bridge Commission is not property of the United States, the Supreme Court of Iowa has decided a federal question of substance in a way probably not in accord with the applicable decisions of this Court which cases it cites in the subjoined brief.

8. The denial of implied constitutional immunity from state taxation in this case would, if allowed to stand, be a judicial repeal of constitutional immunity of Federal instrumentalities from state taxation, thereby limiting the doctrine to departments of the Federal government or to cases where expressly granted by Congress.

9. This case involves the organic nature of a corporation created by the Congress of the United States, the determination of which will not only affect its liability for state taxes but also other rights dependent on the basic nature of this corporation.

WHEREFORE, your petitioner respectfully prays that Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Iowa, demanding that court to certify and send to this Supreme Court for its review and determination a full and complete transcript of the record and all proceedings of said Supreme Court had in the case numbered and entitled on its docket "No. 46015, In the Matter of the Appeal of City of Dubuque Bridge Commission from the Board of Review for the City of Dubuque, Julien Township, Dubuque County, Iowa," to the end that the decision and judgment of said Supreme Court may be reviewed and reversed by this Honorable Court and that judgment may be entered for this petitioner.

CITY OF DUBUQUE BRIDGE COMMISSION,
By E. MARSHALL THOMAS,
SMITH & O'CONNOR,
Its Attorneys.